

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014070373

ORDER DENYING MOTION FOR
STAY PUT

On July 7, 2014, Student filed a request for due process hearing (complaint) naming Tustin Unified School District (Tustin). That same day, Student also filed a motion for stay put requesting he be permitted to attend the extended school year (ESY). Tustin did not respond to the motion for stay put.¹ Student turned 22 years old on June 16, 2014.

APPLICABLE LAW

An individual with exceptional needs who qualifies for special education and related services is entitled to remain in his or her current educational placement until due process hearing procedures are completed unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP) that was implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

A person who turns 22 years old during the months of January to June, inclusive, while participating in a special education program may continue participating in that program for the remainder of the current fiscal year, including any extended school year program. (Ed. Code, § 56026, subd. (c)(4)(A).)

¹ It is not clear if Tustin was served with the motion for stay put on July 7, 2014, or July 9, 2014.

DISCUSSION

Stay put is automatic and an order is required only if there is a dispute as to stay put placement. The dispute here centers not on a traditional stay put analysis but on Student's eligibility for ESY in light of his age. According to Student's "Supplemental Information," the regular school year ended on June 24, 2014, and the ESY is scheduled from July 7, 2014, through approximately August 6, 2014.

Although Tustin did not file a response confirming such, typically the fiscal year ends on June 30. Tustin's ESY did not start until the fiscal year following Student's 22nd birthday. Therefore, as a matter of law, Student is no longer an individual with exceptional needs as defined in Education Code section 56026. Accordingly, he is not entitled to stay put.

ORDER

1. The motion for stay put is denied without prejudice if Student is able to submit information establishing that Tustin's fiscal year extended beyond June 30, 2014.
2. Tustin shall have a duty to inform the Office of Administrative Hearings if its fiscal year extended beyond June 30, 2014.

Dated: July 11, 2014

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings